Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116

COMMENTS

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SUMMARY

The Law Offices of Susan Bahr, PC submits these comments specifically concerning footnote 57 of the Notice of Proposed Rulemaking (NPRM) in the captioned proceeding. In that footnote, the FCC appropriately proposes to remove the universal service contributions from the contribution base -- if the FCC were to continue to base contributions on a carrier's revenues. But the FCC proposes to remove the universal service contribution by dividing the carrier's reported revenues by "1 plus the contribution rate." That formula discriminates between incumbent and new carriers, and is therefore unlawful pursuant to Section 254(d) of the Communications Act of 1934, as amended. By comparison, simply subtracting the universal service contribution from a carrier's revenues would accomplish the goal of removing the universal service contribution and would not be discriminatory.

For the foregoing reasons, if the FCC continues to base the carriers' contributions on their revenues, the Law Offices of Susan Bahr, PC requests the FCC to remove the universal service contribution from the contribution base by subtracting the universal service contribution from a carrier's revenues.

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COMMENTS

The Law Offices of Susan Bahr, PC respectfully submits these comments specifically concerning footnote 57 of the Notice of Proposed Rulemaking (NPRM) in the captioned proceeding.[1] In that footnote, the FCC appropriately proposes to remove the

[1] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 01-145, rel. May 8, 2001 [hereinafter NPRM].

universal service contributions from the contribution base. But the FCC proposes to divide the carrier's reported revenues by "1 plus the contribution rate." That formula discriminates between incumbent and new carriers. A better way to remove the universal service contribution would be to simply subtract the universal service contribution from a carrier's revenues. These issues are discussed below.

Background

The Law Offices of Susan Bahr, PC represents small wireline and wireless carriers that would be negatively affected by a contribution formula that favors new entrants over incumbents.

In earlier comments concerning the universal service contributions, the undersigned counsel provided a mathematical proof[1] that supported the argument that the inclusion of the universal service contribution in the contribution base would unlawfully discriminate in favor of new carriers.[2] The Commission did not fully consider that argument, and decided to

[1] A copy of that proof is enclosed as the Attachment here.

[2] Reply Comments of Blooston, Mordkofsky, Jackson & Dickens, CC Docket No. 98-171, dated Nov. 18, 1996.

include the universal service contribution in the contribution base.[3]

I. The Universal Service Contribution Should Not Be Included in the Contribution Base

Now, in the NPRM, the FCC proposes to remove the universal service contribution from the contribution base. The Law Offices of Susan Bahr, PC supports this goal. Otherwise, if the universal service contribution were included in the contribution base, the contribution for any one period would be based on the revenues for all prior periods, thereby discriminating against carriers that have been providing service for the longest time, as shown below.

In general, the universal service contribution for one period is based on the revenues in the prior period. For simplicity, consider the universal service contribution in period 2 to be based on revenues in period 1. Then, the universal service contribution in period 3 is based on the revenues in period 2 which include revenues used to make the contribution in period 2. Because the contribution made in period 2 is based on revenues in period 1, the universal service

[3] Federal-State Joint Board on Universal Service, Twenty-First Order on Reconsideration in CC Docket No. 96-45, and Memorandum Opinion & Order in FCC Docket Nos. 96-45, 97-21, and 98-171, 15 FCC Rcd. 12,050, 12,055, 12,058-60 (2000) [hereinafter Memorandum Opinion & Order].

contribution in period 3 is based on revenues in period 2 and revenues in period 1. Similarly, the universal service contribution in period 4 would be based on revenues in period 3, period 2 and period 1. In general, the contribution for period N is based on the revenues for period N-1, period N-2, period N-3 and so on. The enclosed mathematical proof shows that this is true.

For example, for a carrier the enters the market in period 5, its period 6 contribution would be based on revenues in period 5. For an incumbent carrier, the period 6 contribution would be based on revenues in period 5, period 4, period 3, period 2 and period 1. In other words, if the universal service contribution is included in the contribution base, the universal service contribution for a carrier that has been providing service for periods N-1, N-2, N-3, etc. would be greater than the universal service contribution for a carrier that began providing service in period N-1.

This discrimination was addressed in the comments referenced above.[4] However, the corresponding Memorandum Opinion & Order did not consider the discriminatory effect of including the universal service contribution in the contribution base. Instead, the Commission focused on a different issue raised by

[4] Reply Comments of Blooston, Mordkofsky, Jackson & Dickens, CC Docket No. 98-171, dated Nov. 18, 1996.

other parties: whether the inclusion of the universal service contribution in the contribution base would result in higher contributions. The Commission showed that the this does not happen, because the contribution factor changes.[5] To support this conclusion, the Commission provided the following calculations. For simplicity, the Commission assumed that the number of carriers was 10, that the total program costs remained constant,[6] and that the carriers each earned $100 for services rendered.

Period 1
Number of Carriers: 10
Revenue per Carrier: $100
Contribution Base: (10 x $100) = $1000
Total Program Costs: $100
Contribution Factor: $100 / $1000 = .10
Contribution per Carrier: (.10 Contribution Factor x $100 Revenue per Carrier) = $10

Period 2
Number of Carriers: 10
Revenue per Carrier: ($100 Service Revenue + $10 Universal Service Charge) = $110
Contribution Base: (10 x $110) = $1100
Total Program Costs: $100
Contribution Factor: $100 / $1100 = .0909
Contribution per Carrier: (.0909 Contribution Factor x $110 Revenue per Carrier) = $10

Period 3
Number of Carriers: 10
Revenue per Carrier: ($100 Service Revenue + $10 Universal Service Charge) = $110

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[5] Memorandum Opinion & Order, 15 FCC Rcd. 12,059-60.

[6] Id. at 12,066 app. B.

Contribution Base: (10 x $110) = $1100
Total Program Costs: $100
Contribution Factor: $100 / $1100 = .0909
Contribution per Carrier: (.0909 Contribution Factor x $110 Revenue per Carrier) = $10

These calculations assume that each of the 10 carriers making the universal service contributions was providing service before Period 1 and throughout the relevant periods. If we were to assume that only 9 carriers provided service before Period 1 (called the "incumbent carriers" below) and that a new carrier began providing service in Period 1, the Commission's calculations would need to be revised as follows:

Period 1

Number of Carriers: 10 (9 incumbents and 1 new carrier)
Revenue per Incumbent Carrier (from prior period): $100
Revenue for New Carrier (from prior period): $0
Contribution Base: (9 x $100) = $900
Total Program Costs: $100
Contribution Factor: $100/$900 = .11
Contribution per Incumbent Carrier: (.11 Cont. Factor x $100 Revenues per Carrier) = $11.11
Contribution for New Carrier: $0

Period 2

Number of Carriers: 10
Revenues per Incumbent Carrier: ($100 Revenues + $11.11 Universal Service Cont.) = $111.11
Revenues for New Carrier: $100 for services rendered
Contribution Base: (9 x $111.11) + (1 x $100) = $1099.99
Total Program Costs: $100
Contribution Factor: $100/$1099.99 = .0909
Contribution for Incumbent Carriers: (.0909 Cont. Factor x $111.11 Rev. per Carrier) = $10.10
Contribution for New Carrier: (.0909 Contribution Factor x $100 Revenue) = $9.09

Period 3

Number of Carriers: 10

Revenues per Incumbent Carrier: ($100 Revenue + $10.10 Universal Service Cont.) = $110.10

Revenues for New Carrier: $100 Service Revenue + $9.09 Universal Service Cont. = $109.09

Contribution Base: (9 x $110.10) + (1 x $109.09) = $1099.99

Total Program Costs: $100

Contribution Factor: $100/$1099.99 = .0909

Contribution for Incumbent Carriers: (.0909 Cont. Factor x $110.10 Rev. per Carrier) = $10.01

Contribution for New Carrier: (.0909 Contribution Factor x $109.09 Revenue) = $9.92

Thus, while the incumbent carriers earn as much as the new carrier from services rendered (i.e., $100), the incumbent carriers have a higher universal service contribution.

The foregoing examples clearly show that the inclusion of the universal service contribution in the contribution base results in discrimination against incumbent carriers in favor of new carriers. But Section 254(d) of the Communications Act of 1934, as amended (the Act) requires contributions to be equitable and nondiscriminatory. Thus, the Act itself prohibits disparate treatment for new and incumbent carriers, and therefore prohibits the use of a contribution base that includes universal service contributions.

II. The Proposed Division by "1 Plus the Contribution Rate" Also Discriminates in Favor of New Entrants

The solution is to remove the universal service contribution from the contribution base. And that is exactly what the FCC proposes to do. But the proposed formula discriminates in favor of new carriers, as shown below.

Footnote 57 of the NPRM states:

> By "collected end-user" revenues we mean end-user revenues excluding uncollectibles and credits, but including revenues from the recovery of universal service contributions through the line-item. Carriers would continue to include pass-through charges, if any, as part of their reporting of collected end-user revenues. The carrier’s contribution base revenue, however, would equal collected end-user revenue divided by one plus the contribution rate. This, in effect, would impute pass-through charges for all carriers and would remove the imputed amounts from the carrier’s contributions base.

(Emphasis added.) This formula for dividing by "1 plus the contribution rate" appears to be a surrogate for the actual removal of the contribution from the contribution base. As a surrogate, it necessarily is imperfect.

But the real problem with dividing by "1 plus the contribution rate" is that the formula discriminates in favor of new carriers. Consider a new carrier that enters the market in period 7. It does not make a contribution during period 7. The new carrier would make a contribution in period 8. At that time, the FCC would divide the carrier's revenues by "1 plus the contribution rate" – in an attempt to remove the universal service contribution. Because the new carrier did not make a universal service contribution in period 7, the formula essentially discounts the new carrier's revenues with the amount of the discount being related to the contribution rate.

For example, suppose Carrier A begins to provide service in period 7 and has $10,000,000 in revenues for services rendered to end users. Suppose Carrier B has been providing service since before period 7 and continues to provide service through period 7 and period 8. Suppose the contribution rate is 5%. Suppose that in period 7, Carrier B collects $10,000,000 from end users for services rendered and an additional $500,000 in universal service charges. Suppose Carrier B's universal service contribution in period 7 is $500,000. Under the FCC's proposed formula, Carrier B's contribution base in period 8 would be the sum of its revenues from services rendered plus its recovered universal service charges divided by "1 plus the contribution rate."

$$\text{Carrier B Contribution Base} = \frac{\$10{,}000{,}000 + \$500{,}000}{1+.05} = \$10{,}000{,}000$$

The contribution base for Carrier A in period 8 would be its revenues divided by "1 plus the contribution rate."

$$\text{Carrier A Contribution Base} = \frac{\$10{,}000{,}000}{1+ .05} = \$9{,}523{,}809.50$$

Thus, Carrier A's contribution base would be less than Carrier B's contribution base. So Carrier A's universal service contribution would be less than Carrier B's universal service contribution – even though Carrier A and Carrier B both earned the same amount from services rendered to end users. In other words, the Commission's proposal to divide by "1 plus the contribution rate" would discriminate in favor of new carriers. Such discrimination is unlawful under Section 254(d) of the Act.

III. The Universal Service Contribution Should Be Subtracted from End-User Revenues

To remove the universal service contribution from the contribution base in an equitable manner, the universal service contribution should be subtracted from the carrier's revenues.

Using this formula in the example above, Carrier B's contribution base for period 8 would be the sum of its revenues from services rendered plus its recovered universal service charges minus its universal service contribution.

Carrier B
Contribution Base = $10,000,000 + $500,000 - $500,000 = $10,000,000

Carrier A's contribution base for period 8 would be its revenues from services rendered minus its universal service contribution, which is $0.

Carrier A
Contribution Base = $10,000,000 - $0 = $10,000,000

Thus, Carrier A and Carrier B would have the same universal service contribution base and the same universal service contributions – which is equitable because Carrier A and Carrier B had the same amount of revenues from services rendered to end users.

Footnote 57 of the NPRM therefore should be changed to state that the universal service contribution must be subtracted from the carrier's revenues, as follows:

> The carrier’s contribution base revenue, however, would equal collected end-user revenue minus their universal service contribution.

Carriers could subtract the universal service contribution as they report their revenues, or the Universal Service Administrative Company (USAC) could subtract the universal service contribution as it calculates the contribution bases. If the former method were adopted, a new line could be added to the Telecommunications Reporting Worksheet whereby carriers would report what their contributions were in the period for which they are reporting revenues.

Conclusion

In sum, the Law Offices of Susan Bahr, PC supports the FCC's goal of removing the universal service contribution from the contribution base – if the Commission continues to calculate universal service contributions based on a carrier's revenues.

But instead of dividing the carrier's revenues by "1 plus the contribution rate," the universal service contribution should be subtracted from the carrier's revenues. This formula is more equitable and nondiscriminatory, as required by Section 254(d) of the Act.

Respectfully submitted,
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June 25, 2001

ATTACHMENT

From Reply Comments of Blooston, Mordkofsky, Jackson & Dickens, CC Docket No. 98-171, dated Nov. 18, 1996.

ATTACHMENT B

Calculation of Universal Service Contribution Where Universal Service Fees Are Included in Contribution Base

The following analysis demonstrates that if the Commission were to include revenues from universal service fees charged to subscribers in the contribution base, the universal service contribution for one year will be based on the revenues for all preceding years.

Let U_i be the universal service contribution in Year i.

Let P be the universal service contribution factor. For simplicity, we will assume that there is only one contribution factor, that it remains constant, and that it is applied to a carrier's total revenues.

Let R_i be the carrier's revenues in Year i (excluding revenues from universal service fees charged to subscribers).

Let Year 1 be the first Year that contributions are due. That is, Year 1 is 1998.

Year 0 therefore is the year for which revenues are used to determined the contribution base for contributions made in Year 1. Year 0 therefore is 1997.

In general, revenues from Year n are used to calculate the contribution due in Year n+1.

Assume that the carrier imposes universal service fees on its customers to recover its contribution for the current Year, and that those fees equal its contribution (i.e., no additional costs for administrative expenses are added in).

Then the contribution in Year 1 (U_1) equals the universal service contribution factor (P) times the revenues from the prior Year (R_0).

$$U_1 = P \times R_0$$

The contribution in Year 2 equals the universal service contribution factor times the revenues from Year 1 plus the universal service fees received in Year 1.

$U_2 = P \times (R_1 + U_1)$ and $U_2 = (P \times R_1) + (P^2 \times R_0)$

In general,

$$U_n = P \times (R_{(n-1)} + U_{(n-1)})$$

And, as demonstrated by the proof on the following page, for all n > 0,

$$\boxed{U_n = \sum_{m=0}^{n-1} (P^{n-m} \times R_m)}$$

Thus, the universal service contribution for Year n is based on revenues in Years 0, 1, . . . (n-1).

For example, using this formula, the contribution in Year 4 would be:

$$U_4 = (P^4 \times R_0) + (P^3 \times R_1) + (P^2 \times R_2) + (P \times R_3)$$

In other words, the universal service contribution in Year 4 is based not only on the carrier's revenues for Year 3, but also on the carrier's revenues for Years 0, 1 and 2.

Or looking at it another way, for revenues in Year n, the carrier makes universal service contributions in Year (n+1), Year (n+2), Year (n+3), and so on. The carrier's contributions for Year n never end.

PROOF OF FORMULA FOR U_n

We know that the formula is true for n=1. That is, $U_1 = P \times R_0$.

Assume the formula is true for n. That is,

$$U_n = \sum_{m=0}^{n-1} (P^{n-m} \times R_m)$$

We also know that $U_{n+1} = P \times (R_n + U_n)$

It follows that:

$$U_{n+1} = P \times \left(R_n + \sum_{m=0}^{n-1} (P^{n-m} \times R_m) \right)$$

So,

$$U_{n+1} = (P \times R_n) + \sum_{m=0}^{n-1} (P^{(n+1)-m} \times R_m)$$

Finally,

$$U_{n+1} = \sum_{m=0}^{(n+1)-1} (P^{(n+1)-m} \times R_m)$$

Thus, the formula is true for n+1. It follows that the formula is true for all n > 0.